

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6252 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No
2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

Versus

Appearance:

Ms.Siddhi Talati, A.G.P. for Respondent No. 1 & 2

Date of decision: 23/12/98

ORAL JUDGEMENT

1. In this writ petition under Article 226 of the Constitution of India writ of mandamus has been sought directing the respondent No.2 to take suitable action against the respondent No.1 for abuse of his powers under Section 9(1) of the Prevention of Anti-social Activity Act, 1985 (for short "PASA Act") and for awarding suitable compensation to the petitioner for his illegal detention from 3.6.1998 to 21.6.1998.

2. Brief fact on which this writ petition is based are shortly as under :

The respondent No.1, Detaining Authority, passed an order under Section 3(2) of the Prevention of Anti-social Activity Act (for short "PASA") against the petitioner considering him to be dangerous person and further considering that his activities were prejudicial for maintenance of public order. The detention order was passed on 3.6.1998. It was revoked by the State Government on 21.6.1998 and the petitioner was set at

liberty immediately thereafter. The allegation in this writ petition is that between 3.6.1998 to 21.6.1998 the petitioner was under illegal detention and that the order passed by the respondent No.1 was passed with a view to help private individual. This is contained in Para : 4 of the grounds of writ petition. It is also mentioned in this para that the respondent No.1 had tried to exercise power not vested in him by law.

3. Learned Counsel for the petitioner has argued that the proceedings were initiated on private complaint and not on the strength of registered criminal cases which came into existence on police report. No inference can be drawn that if some incident takes place and a private complaint is filed, that complaint is necessarily bogus. Unless the competent Court finds that the private complaint was malafide or bogus, it cannot be said that the criminal case initiated on such complaint was without any reasonable and probable cause. The report was submitted by the Sponsoring Authority and after considering the material the detaining Authority arrived at subjective satisfaction that the petitioner was dangerous person and his activities were prejudicial for maintenance of public order. This subjective satisfaction was not approved by the State Government which revoked the detention order passed by the Detaining Authority, but there is no material before me in this writ petition to show that the State Government while revoking the order of the Detaining Authority observed that exercise of power by the detaining authority was excessive or it was exercised with a view to help some private individual. Unless the malafide is alleged and proved no compensation can be awarded for which Section 17 of the PASA can be referred which provides that no suit, prosecution or other legal proceeding shall lie against the State Government or any officer or person for anything in good faith done or intended to be done in pursuance of this Act. It is thus clear that if some thing has been done by the detaining Authority in good faith in pursuance of the provisions of this Act no suit or prosecution or other legal proceeding shall lie against such person. Other legal proceeding will include writ petition of this nature also. Mere allegation that the power was exercised by the detaining Authority with a view to help some private individual is not enough to hold that the power was not exercised bonafide or that the detaining authority exercised the power which never vested in him. Under Section 3(2) read with S.9(1) of the PASA such power is vested in the detaining Authority under delegated power from the State Government. Disputed question of fact that the action of the

respondent No.1 was with a view to help some private individual cannot be determined in this petition because this requires evidence and collection of evidence and returning findings on disputed question of fact is not permissible in exercise of jurisdiction under Article 226 of the Constitution of India.

4. Thus, the petitioner has prima facie failed to establish that the action of the respondent No.1 was not bonafide; rather it was malafide. Consequently no compensation can be awarded and as such Relief (B) has to be refused.

5. So far as Relief (A) is concerned no mandamus is to be issued by this Court directing the respondent No.2 to take suitable action against the respondent No.1 for abuse of his power under Section 9(1). If the petitioner feels he can take separate action against the respondent under law if it is so prescribed. But on the facts and circumstances of this case no writ of mandamus requires to be issued in this petition.

6. For the reasons stated above the petition fails and is hereby dismissed. No order as to costs.

sd/-

( D.C.Srivastava, J. )

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